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UNITED STATES DEPARTMENT OF AGRICULTURE

IN RE: PUBLIC HEARING  
SOLID WOOD PACKING MATERIALS/IPPC STANDARDS

Hearing held on the 25th day of June, 2003  
at 9:00 a.m.  
701 West Ocean Boulevard  
Long Beach, California

TRANSCRIPT OF PROCEEDINGS

BEFORE: RICHARD KELLY

APHIS COMMITTEE MEMBERS:  
RAY NOSBAUM  
CHRIS KLOCEK

1	INDEX	
2	Page	
3	Norman Harris	20
4	Robert Kooda	21
5	Lloyd Mentzer	31
6	Ron Reuben	32
7	Jens Larsen	37

8

## 9 INDEX TO EXHIBITS

10

11 [None]

12

## P R O C E E D I N G S

June 25, 2003

MR. KELLY: Welcome to the Animal and Plant Health Inspection Services public hearing on our Proposed Rule that would amend our wood importation regulations to adopt an international standard. That standard is entitled "Guidelines for Regulating Wood Packaging Material in International Trade" and that standard was approved by the interim commission on FITO sanitary measures of the International Plant Protection Convention, that's the IPPC, on March 15, 2002, just over a year ago. The standard calls for wood packaging material to be either heat-treated or fumigated with methyl bromide and marked with an improved international mark certifying that it was treated. We propose to adopt the IPPC Guidelines because they represent the current international standard determined to be necessary and effective for controlling pests in wood packaging materials used throughout the world in global trade. We also propose to adopt this standard because current United States requirements for wood packaging material associated with imports are not fully effective. My name is Richard Kelly and I'm a

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1 regulatory analyst for the USDA Animal and Plant Health  
2 Inspection Service or APHIS. I will be the presiding  
3 officer for today's hearing. Today's hearing here in  
4 Long Beach is the second of the three public hearings  
5 that will be held on the Proposed Rule. We had the  
6 first one in Seattle this Monday, June 23. And the  
7 third hearing will be this Friday the 27th in  
8 Washington, DC. Notice of these public hearings was  
9 included in the Proposed Rule, which was published in  
10 the Federal Register on May 20, 2003. Copies of that  
11 Proposed Rule and of the IPPC Guidelines are both  
12 available outside on the registration table. So the  
13 purpose of today's hearing is to give interested persons  
14 the opportunity to present in person their data, views,  
15 or arguments concerning the Proposed Rule. Those  
16 persons here today who choose to testify will have the  
17 opportunity to ask questions about the Proposed Rule.  
18 The APHIS personnel here will try to respond to clarify  
19 any provisions of the Proposed Rule that you have  
20 questions about, however we view this hearing as an  
21 opportunity for us to receive public comments from you  
22 and not as an opportunity to debate the merits of the  
23 provisions of the rule. So if you have questions about

1 the rule, we're hoping that they will be to clarify its  
2 meaning or to understand it, rather than to engage in a  
3 debate on the spot about the merits of the rule. At  
4 this hearing any interested party can appear and be  
5 heard in person or through an attorney or another  
6 representative. Persons who have registered by email or  
7 phone in advance of the hearing will be first to speak.  
8 As it turns out, however, it seems that as of five  
9 minutes ago we don't have anyone who pre-registered to  
10 speak and who showed up here today. So in a couple of  
11 moments, just to give you some warning, I will poll the  
12 audience and ask if anyone here does want to give  
13 comments or to stand up and speak or ask questions about  
14 it. So think about whether you're interested in doing  
15 that in view of the fact that we seem to have no  
16 registered speakers from the audience so far.

17 Now having gotten through that somewhat  
18 convoluted explanation, the Federal Register that  
19 notified you of this hearing also said that it was  
20 scheduled to conclude at 5:00 p.m. today. Obviously we  
21 will be done a lot sooner than that. All comments made  
22 here today are being recorded and will be transcribed by  
23 the court reporter over here. Because there is a

1 transcript being made and it is being recorded, I will  
2 ask anyone who wants to speak to take over this  
3 microphone because this is connected to the court  
4 reporter's system to ensure an accurate transcript. A  
5 copy of the hearing transcript will be posted on our  
6 website in several weeks. The website address is given  
7 in the Proposed Rule on the first page under the section  
8 labeled Addresses. A copy of the hearing transcript  
9 will also be made available in our reading room, which  
10 is in Washington, DC, downtown where all of our comments  
11 are stored. That room is open from 8:00 a.m. to 4:30  
12 p.m. if anyone wants to go there to inspect either  
13 written comments or transcripts of these hearings. In  
14 accordance with the procedures noted in the Proposed  
15 Rule, I'm requesting that if anyone has a prepared  
16 statement and you read it into the record, if you could  
17 leave us one or preferably two copies of that statement  
18 we would appreciate it. That way the court reporter can  
19 compare it to your transcribed remarks and get things  
20 like spellings correct and so on.

21 Okay. Any written or oral statements  
22 submitted at today's hearing and any other written  
23 comments we receive before the close of the comment

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1 period on July 21 will become a part of the public  
2 record and will be considered by APHIS when we decide  
3 final action on this Proposed Rule. I'd like to remind  
4 everyone as I just said that the close of the comment  
5 period is on July 21, so if you have any additional  
6 comments after today you should get them to us by July  
7 21 following the procedures in the Proposed Rule.

8 Now before I finish my remarks I'd like to  
9 introduce the people from APHIS who are here today.  
10 Next to me is Mr. Ray Nosbaum, who for several years has  
11 been the program manager for the Proposed Rule and for  
12 APHIS' solid wood packing materials project in general.  
13 Mr. Nosbaum is going to provide an overview of the  
14 Proposed Rule in a few minutes and will describe its  
15 relationship to other activities on solid wood packing  
16 materials that APHIS is engaged in. And he will be  
17 available as I said to answer questions about the  
18 meaning of the Proposed Rule if you have any. Sitting  
19 next to Mr. Nosbaum is Mr. Chris Klocek, an APHIS  
20 economist, who developed the economic analysis that was  
21 cited in the Proposed Rule in its section on Executive  
22 Order 12866 and the Regulatory Flexibility Act. Also  
23 here today is Linda Toran outside at the registration

1       table, who was checking you in and who made all of the  
2       logistical arrangements for this series of public  
3       hearings.

4               That concludes my opening remarks. After the  
5       short presentation by Mr. Nosbaum that's coming up next,  
6       I will poll the audience and see if any of you have  
7       remarks. Thank you. Ray?

8               MR. NOSBAUM: Thanks, Richard. Can  
9       everybody hear me okay? Okay. Good morning. You can  
10      find the regulations for the Animal and Plant Health  
11      Inspection Service's regulations on logs, lumber, and  
12      other unmanufactured wood articles in 7 Code of Federal  
13      Regulations 319.40. Now this whole thing is not the  
14      log's rule. About ten pages of this is, but this is --  
15      these are the regulations that our statutory authority  
16      gives us authority to make. The Proposed Rule and its  
17      related economic analyses are available on the PPQ  
18      website. And if you would turn to the Proposed Rule,  
19      page 27488, if you look under the last column, the  
20      Executive Order 12866 and the Regulatory Flexibility  
21      Act, at the bottom of the second paragraph you'll see  
22      the website address. And you can find electronic copies  
23      of the Proposed Rule and the economic analyses there.

1 Now there is also an environmental analysis that is --  
2 that was drafted and made available related to this rule  
3 and that website is not in here so let me read it off to  
4 you. It's  
5 [www.aphis.usda.gov/ppd/ds/ppq/swpmdeis.pdf](http://www.aphis.usda.gov/ppd/ds/ppq/swpmdeis.pdf). And if you  
6 would like if you contact me you can also get a hard  
7 copy of that document. Okay. I'll give one, a quick  
8 review of regulatory history related to solid wood  
9 packing material, two, a short description of the  
10 International Plant Detection Convention standard  
11 requirements, three, reasons APHIS believes adopting the  
12 international standard makes sense and four, feedback on  
13 a few frequently asked questions about the Proposed  
14 Rule.

15 First, a quick review of rule making related  
16 to solid wood packing material by APHIS. Rule making  
17 began about 1990 and resulted in a Final Rule in 1995.  
18 The requirements of this rule for solid wood packing  
19 material, except for Canada and the northern border  
20 states of Mexico, are that solid packing material must  
21 be debarked and if not debarked it must be heat-treated,  
22 fumigated, or chemically preserved. In all cases, an  
23 importer's document is required to certify that the

1 solid wood packing material was either debarked or  
2 properly treated. In 1996 and 1998, the Asian  
3 longhorned beetle, a wood bore, was discovered in New  
4 York and the Chicago metropolitan areas. The Asian  
5 longhorned beetle is believed to have arrived on solid  
6 wood packing material from China. In November of 1998,  
7 we published in the Federal Register an interim rule  
8 requiring China and Hong Kong to heat treat at 71  
9 degrees Celsius, maintaining that temperature at the  
10 core for 75 minutes or fumigation with methyl bromide  
11 using the treatment schedule in the PPQ manual,  
12 treatment manual, or chemically preserve solid wood  
13 packing material. Additionally, China and Hong Kong  
14 must provide a phytosanitary certificate that treatments  
15 are properly done. In 1998, rule making began to remove  
16 the northern states of Mexico from the exemption to  
17 debark or treat as required by the 1995 Final Rule. A  
18 risk analysis completed by the US Forest Service  
19 determined that there is wood -- that northern states of  
20 Mexico is a source of wood for logs, lumber, and solid  
21 wood packing material that are a pathway for quarantined  
22 pests. APHIS is completing a Final Rule requiring the  
23 northern states of Mexico to meet the regulatory

1 requirements for the rest of the world. In 1998, APHIS  
2 published an advanced Proposed Rule -- advanced notice  
3 of Proposed Rule making requesting public comment on  
4 possible alternatives for a proposed ruling on importing  
5 solid packing material from anywhere in the world. In  
6 August of 2000 we published a draft-based signed risk  
7 assessment for public comment. The draft-based signed  
8 risk assessment gives the risk of introduction of exotic  
9 pests from solid wood packing material without  
10 treatment. These pests fall into five categories: bark  
11 beetles, defoliators, sap suckers, wood bores, and wood  
12 pathogens.

13 In March of 2002, a new international standard  
14 entitled "Guidelines for Regulating Wood Packaging  
15 Material in International Trade" was approved. APHIS  
16 proposes to adopt this international standard into the  
17 regulations on logs, lumber, and unmanufactured wood.  
18 APHIS feels adopting the International Plant Protection  
19 Convention standard is good strategy in providing needed  
20 phytosanitary measures to protect forests and  
21 agriculture. From now on I'll refer to that standard as  
22 the IPPC standard, just to make it easier to say. The  
23 treatments in this standard are effective in controlling

1 bark beetles and wood bores, which are 95 percent of the  
2 pests we intercept coming in by solid wood packing  
3 material. The requirements of the IPPC standard are  
4 one, heat treatment at the core of 56 degrees Celsius  
5 for 30 minutes or fumigation with methyl bromide using  
6 the schedule in the IPPC standard and marking the solid  
7 wood packing material with approved -- the approved IPPC  
8 mark indicating the proper treatment.

9 Let me just take a moment and refer to a  
10 couple of pages in the standard. Towards the back there  
11 are three annexes and in the first annex, which is on  
12 page 12 of the standard, you'll see the treatment  
13 schedule for methyl bromide and also the list of pests,  
14 the family name of the pests, the standard targets. It  
15 does not target all exotic pests. And then on the back  
16 side of that page, page 13, is Annex II and there you  
17 can see the approved mark. The required treatments  
18 target pests listed in the international standard, which  
19 are bark beetles, wood bores, termites, and the pine  
20 wood nematode. Bark beetles and wood bores represent  
21 over 95 percent of the exotic pests the US intercepted  
22 on solid wood packing material in 2000 and 2001. The  
23 IPPC lists other potential treatments, which require

1 more study. Now these would be on page 14 of your copy  
2 and that's Annex III. And there are measures being  
3 considered for approval under this standard, but are not  
4 yet approved or stated to be required treatments.

5 As countries receive and provide verifiable  
6 treatments, they may be added as required treatments to  
7 the international standard on solid wood packing  
8 material. APHIS expects to participate in and monitor  
9 this process. If this process provides adequate  
10 phytosanitary protection for the US, APHIS may use the  
11 IPPC process for amending the international standard on  
12 solid wood packing material, rather than pursuing its  
13 own independent rule making.

14 Why does APHIS believe that it's important to  
15 adopt the IPPC standard? Among other reasons, I would  
16 like to highlight those interceptions I've already  
17 talked about, research on treatment effectiveness, and  
18 international trade requirements for equivalency and  
19 harmony. Besides the interceptions, I would  
20 additionally like to refer you -- well, related to these  
21 interceptions, I would like to take a moment and refer  
22 you to the Proposed Rule. And you will find on pages  
23 27484 and 85 two charts. In particular the one on page

1       85, which summarizes the recorded interceptions and  
2       paths they came in via solid wood packing material were  
3       recorded as having been intercepted at the ports. The  
4       bottom line represents the interceptions from China and  
5       in particular you'll notice that the interceptions  
6       dropped after the implementation of the interim rule,  
7       which is very similar to the requirements of the IPPC  
8       standard, where as the rest of the world the  
9       interceptions continue to rise.

10               In 2000 and 2001, exotic bark beetles were  
11       found in New York and Pennsylvania, as well as Halifax,  
12       Nova Scotia, and Canada. Halifax is a source of trade  
13       arriving to the US by rail. In July 2002, the emerald  
14       ash bore was identified in five counties in Michigan, as  
15       well as in Windsor, Ontario, in Canada, which is across  
16       from Detroit, Michigan. The emerald ash bore is  
17       suspected of arriving on dunnage, a form of solid wood  
18       packing material, three years ago or maybe as long as  
19       five years ago. Emerald ash bore is also confirmed in  
20       northwestern Ohio. Also in July 2002 in Indiana  
21       inspectors found live and dead wood boring moths in  
22       wooden containers originating in Spain. Finally,  
23       earlier this year signs of an Asian bark beetle were

1 confirmed in Colorado and Utah. In all cases solid wood  
2 packing material is suspected to be the pathway of entry  
3 for these exotic pests.

4 APHIS believes the effectiveness of the  
5 required IPPC treatment is support by research. Besides  
6 the research cited in the preamble of the Proposed Rule  
7 and you can find a list of the citations on page 27488.  
8 And also you can find on page 27482 at the bottom of the  
9 first column the list of resources used by the working  
10 group that drafted the IPPC standard that was finally  
11 approved in March of 2002.

12 The IPPC is beginning collaboration with  
13 international scientific organizations and documenting  
14 effectiveness of current required treatments on  
15 additional pests and additional treatments on all pests.  
16 The US is involved in these efforts.

17 Adopting the IPPC standard would replace the  
18 requirements be placed on China and Hong Kong. This  
19 helps the US meet international trade goals of  
20 equivalency because our requirements would apply  
21 similarly around the world. The sanitary and  
22 phytosanitary agreement requires members of the World  
23 Trade Organization to treat trading partners similarly.

1       The US is a member of the World Trade Organization.  
2       Additionally, adopting the IPPC standard helps the US  
3       achieve harmonized phytosanitary measures with the major  
4       trading partners, who are all signers of the IPPC and  
5       also are expected to adopt the IPPC standard on solid  
6       wood packing material.

7               As contact for questions on the Proposed Rule  
8       published in the Federal Register on May 20, I received  
9       calls asking me to clarify information. These calls are  
10      not public comments and my responses are not official  
11      responses to those comments. Here are a few of the  
12      answers -- here are the answers to a few of the most  
13      frequently asked questions. First, will the US  
14      implement this standard on January 2004? The source of  
15      this date is a decision sheet signed in April of this  
16      year by the heads of the national plant protection  
17      organizations of Canada, the USA, and Mexico. The APHIS  
18      Plant Protection and Quarantine is the national plant  
19      protection organization for the United States. The  
20      decision sheet states that it is the goal of all three  
21      countries to coordinate implementing the IPPC standard  
22      for all of North America on that date. Achieving this  
23      date is dependent on rule making being completed in the

1       three different countries.

2               Second, when will the rule go into effect?

3       Given current information, APHIS will phase in full  
4       compliance of the regulation. We already notified the  
5       World Trade Organization of our intent to adopt the IPPC  
6       standard. The US embassy agricultural trade officials  
7       were cabled so that they could inform the national plant  
8       protection organizations and exporters of other  
9       countries of the expected requirements to move solid  
10      wood packing material into the United States. Our  
11      current thinking is that for awhile after the  
12      publication of the Final Rule, we will accept some paper  
13      certification of treatments. Non-compliant solid wood  
14      packing material would be stopped and treated at the  
15      importer's cost. We expect to track frequent non-  
16      compliant sources and share information with Canada and  
17      Mexico. Inspections would especially target non-  
18      compliers. It is anticipated that a full-enforcement  
19      non-compliant -- that at full enforcement non-compliant  
20      solid wood packing material would be rejected and civil  
21      penalties will be applied for fraudulent use of the  
22      approved IPPC mark.

23              Third, will APHIS encourage use of substitute

1 materials in its rule making? Synthetic and processed  
2 wood materials used to make packing materials are not  
3 regulated by APHIS because we believe their manufacturer  
4 already provides adequate protection against invasive  
5 species. Our regulations on wood are designed to make  
6 those packing materials made of solid wood adequately  
7 protected from pests. APHIS believes that this provides  
8 a range of safe packing materials. Businesses will make  
9 the choice of the best material based on phytosanitary,  
10 environmental, and economic considerations.

11 Four, what is the status for the IPPC approved  
12 mark? The original mark in the March 2002 approved IPPC  
13 standard has been replaced. And the standard is no  
14 longer suspended by the Food and Agricultural  
15 Organization of the UN, who trademarked a replacement.  
16 The new mark and the copies of the standard -- are in  
17 the standard distributed to you and I do have an  
18 enlargement here, but you do already have it in your  
19 handout. I think I already pointed it out to you.

20 Fifth, what about US exports involving solid  
21 wood packing material to other countries? When other  
22 countries adopt the IPPC standard by their own rule  
23 making, US exporters will be required to meet the

1 requirements of those trading partners. The US rule is  
2 an import rule and does not impose requirements on US  
3 companies exporting to other countries. This rule is  
4 putting requirements on other countries meeting our  
5 requirements to bring solid wood packing material to the  
6 United States. APHIS PPQ is the national plant  
7 protection organization for the US. This memorandums of  
8 understanding with two organizations to help US  
9 exporters meet the requirements of other countries  
10 adopting the IPPC standard and applying the approved  
11 IPPC mark. I want to point out to you that the national  
12 plant protection organizations of each country adopting  
13 the standard are required to certify that the wood  
14 leaving their country meets the requirements of the  
15 standard. And information about that can be found on  
16 page 10 under 5 and 6.

17 The American Lumber Standards Committee should  
18 be contacted on procedures for heat treatment. So if  
19 you were -- want your supplier or you yourselves will be  
20 manufacturing the wood that will need to meet the  
21 requirement, you should contact them at [www.alsc.org](http://www.alsc.org) or  
22 call them at (301) 972-1700 in order to meet the  
23 requirements for heat treatment and applying the mark.

1 Now for fumigate procedures for fumigation with methyl  
2 bromide, the organization to contact is the National  
3 Wood Pallet and Container Association and their website  
4 is [www.palletcentral.com](http://www.palletcentral.com) or you can call them at  
5 (703) 519-6104. In order to use the approved IPPC mark,  
6 a US exporter must follow these organizations'  
7 procedures and we monitor their procedures regularly.

8 Thank you for your attendance and listening to  
9 my remarks.

10 MR. KELLY: Thank you, Ray. In a moment  
11 we'll move on to comments or questions from the  
12 audience. I just wanted to reemphasize in the middle of  
13 Ray's presentation he mentioned the timeline for the  
14 rest of this project and of course he mentioned the  
15 target date of the North American countries of January.  
16 The Proposed Rule's comment period closes July 21. What  
17 has to happen after that for this -- for any Final Rule  
18 to take legal effect is we have to consider the comments  
19 that came in, develop a Final Rule including any changes  
20 that the comments might have elicited from the Proposed  
21 Rule, and then we have to -- after that Final Rule is  
22 developed within APHIS we have to of course get it  
23 cleared through several levels of review and then

1 published in the Federal Register as a Final Rule.  
2 Normally, the Final Rule doesn't become effective  
3 immediately upon publication, though in some cases that  
4 may happen. Normally there's at least a 30-day period  
5 after the publication of the Final Rule before its  
6 provisions begin to take effect. So at the least we are  
7 talking several months after the close of the comment  
8 period on July 21 before a Final Rule could be  
9 published.

10 MR. NOSBAUM: Let me just add to that. Those  
11 of you who follow the National Plant Protection  
12 Organization, US, Canada, and Mexico are members of that  
13 organization. It's a parallel organization with NAFTA.  
14 You may be aware that there was in fact originally the  
15 plan to implement the standard on June 1 of this year  
16 and then that was subsequently delayed to January 2004.  
17 So again, it is dependent on when all three countries  
18 are ready to jointly implement that that will actually  
19 be done.

20 MR. KELLY: Very well. For the next part of  
21 our meeting today I'm going to invite comments or  
22 questions or statements from the audience. And as I  
23 mentioned, we don't have any pre-registered speakers,

1 but we encourage anyone who's interested to make any  
2 comments or ask any clarifying questions that you would  
3 like us to address today. Is there someone out there  
4 who would like to be the first to speak? Yes, sir. If  
5 you don't mind, would you come and take the microphone  
6 because we need to have the court reporter capture this  
7 on tape. And if you would give us your name and spell  
8 your last name at the beginning of your statement, the  
9 court reporter needs that to update.

10 MR. HARRIS: Okay. Thank you. My name is  
11 Norman Harris H-a-r-r-i-s and I'm from Nippon Express.  
12 Just regarding the export that you mentioned in your  
13 question #5, that is something that you're saying is  
14 depending upon the regulations enforced in the countries  
15 being exported to. And would we get those regulations  
16 from those countries directly or do you have some source  
17 for us to contact to get those regulations?

18 MR. NOSBAUM: Yes. You can do either, but if  
19 you would like assistance from APHIS, there is someone  
20 to contact and I'll give you the name and telephone  
21 number. His name is Dave Lamb. It's spelled just like  
22 the animal L-a-m-b. And the number is (301) 734-3818.  
23 However, before you call him do go to our website

1       because there is information there about a number of the  
2       trading partners' requirements. If you can't find what  
3       you want there then give Dave a call.

4               MR. KELLY: Thank you. Sir, I think I saw  
5       your hand up? Did you wish to speak?

6               MR. KOODA: I have a question.

7               MR. KELLY: Okay. Let me hand you the  
8       microphone then, please.

9               MR. KOODA: I don't know if you want to  
10      record this.

11              MR. KELLY: Well, that is the point of the  
12      hearing, so if you don't mind. You can have your choice  
13      of speaking from down there or using the podium.  
14      Whichever you prefer.

15              MR. KOODA: Thank you. My name is Robert  
16      Kooda. I'm with Sony Electronics. K-o-o-d-a. Okay.  
17      So if we have let's say a crate and the make-up of this  
18      crate is plywood and some solid wood, okay, and you can  
19      imagine such a crate, plywood and solid wood. Will  
20      these rules apply? Will these proposed rules apply?

21              MR. NOSBAUM: Why don't you give me all your  
22      questions at one time?

23              MR. KOODA: Okay. That's the first question.

1 I understand that -- because I understand that the rule  
2 would not apply to manufactured-type wood, plywood I  
3 guess. Okay. The second question I have is do you have  
4 some type of -- can you provide us with some type of  
5 image on implementation? I understand that you take a  
6 phase by phase approach and the ultimate phase, as  
7 published in the Proposed Rule, is re-export for any  
8 violation. We can understand that, but just some high  
9 level image if you can. And can you tell me your  
10 feeling on -- how firm you feel implementation will  
11 actually occur? How positive you feel this is going to  
12 take place. Is it or is it not? Based on your action,  
13 I'm feeling that it's going to. And I have the same  
14 question as the gentleman from Nippon Express because my  
15 company looks at trade on a global view. And we have  
16 imports coming to the United States, we have exports  
17 leaving the US, but of course we have many, many, many  
18 different trading partners, many different trading  
19 countries that we're dealing with. And our  
20 understanding is that this IPPC standard is a global  
21 initiative and there are going to be other countries  
22 adopting this standard. And I'd like to know -- I'd  
23 like to get some type of images to where these countries

1 are at in terms of implementation, when, where, you know  
2 and it seems that there is some cooperative effort I  
3 believe within the World Trade Organization. Is that  
4 correct? And I'd like to get some more information on  
5 that so that I can inform my colleagues on a global  
6 basis. That's it.

7 MR. KELLY: Thank you. I'll let Ray respond  
8 to most of those questions because he's more expert on  
9 them. I will say just briefly on the point of how  
10 likely this is to go into effect just the way it was  
11 proposed, well, obviously we can't say for sure until we  
12 get all the comments and see if anyone makes a good case  
13 for changing any of the requirements. However, APHIS  
14 does firmly believe that there, as you said, is a  
15 worldwide movement to adopt the IPPC Guidelines and that  
16 a number of other countries are already in the process  
17 of doing so or are expected to do so soon. And the  
18 purpose -- part of the purpose of our proposal was to  
19 make the US practice consistent with what we expect to  
20 see from the rest of the world. And at this point in  
21 time we still believe, as we said in the Proposed Rule,  
22 that the rest of the world is moving to adopt the IPPC  
23 Guidelines and that it would benefit the US to do so

1 likewise, both for purposes of protecting against the  
2 pests associated with them and for the purposes of  
3 consistency in world trade practices. I will ask Ray to  
4 respond to the rest of the questions.

5 MR. KOODA: I've spoken with Ray. I don't  
6 know if you remember me, but...

7 MR. NOSBAUM: All right. What Robert is  
8 saying is that we've spoken on the telephone. He's  
9 called and possibly a couple of the questions that I  
10 cited as most frequently asked questions were questions  
11 that you asked me on the phone. But let me try to  
12 address your questions. Before I begin, though, I  
13 recommend that you submit written comments if you want  
14 to -- if you don't feel the oral response is  
15 satisfactory or you take it and you want to pursue the  
16 response further, please write comments. The other  
17 thing is if you have ideas about how you would like to  
18 see it done that you think are good and should be  
19 considered, I invite everybody in the audience to submit  
20 comments proposing ideas to us. This is what the  
21 comment period is all about. But starting with the  
22 crates made of plywood and solid wood packing material,  
23 what size crates are we talking about here?

1                   MR. KOODA:   This size.

2                   MR. NOSBAUM:   Okay.   All right.   The reason I  
3   ask is solid wood packing material to us is a  
4   substantial size and I think you're talking about what  
5   we're concerned with.   The plywood in and of itself is  
6   considered a processed wood.   We were discussing this in  
7   Seattle and regulations do say without naming plywood,  
8   do identify it as a processed wood.   So it would not be  
9   covered by this rule.   However, any pieces or parts that  
10   you'd be adding to it like you know that are solid cut  
11   wood, that would be solid wood packing material and  
12   would need to be treated.   I think what you would need  
13   to think about in your own process is do you want to  
14   treat these crates as crates you know when you treat  
15   them or do you want to treat the solid wood packing  
16   material first before you assemble your crate?   And from  
17   what I've seen in the east where I've visited  
18   manufacturers, people are doing both.   And whatever is  
19   most cost effective or efficient for your company or for  
20   your supplier, however you're handling that.   If you're  
21   not doing the manufacturing yourself you need to decide  
22   what is the most cost effective for you in terms of  
23   treating that wood.   Either you could treat the wood

1       before it's added to the assembly of the crate or you  
2       could treat the whole crate. I think that's a decision  
3       you need to consider in your company.

4               MR. KOODA:    The bottom line is that if I have  
5       a crate coming into the US and it's composed of plywood  
6       and boards...

7               MR. NOSBAUM:   Okay. I'll tell you what. You  
8       take this and I'll go to the podium.

9               MR. KELLY:    I'm sorry for the nuisance, but  
10      we really do need to capture all of this for the benefit  
11      of people who will just be reading the transcripts.

12              MR. KOODA:    So bottom line is that if I have  
13      a crate and it's composed of plywood and solid wood,  
14      that that article, the solid wood would be subject to  
15      this Proposed Rule? That's the bottom line. Whether I  
16      want to have those individual pieces of solid wood  
17      stamped with the IPPC mark or that I can have the stamp  
18      on the whole crate somewhere, that's up to our  
19      discretion?

20              MR. NOSBAUM:   Correct.

21              MR. KOODA:    As long as there is a stamp on  
22      that crate it will comply basically.

23              MR. NOSBAUM:   Well, the stamp is indicating

1       that the treatments were properly applied.

2               MR. KOODA:    But the stamp is this stamp that  
3       you've indicated in this document?

4               MR. NOSBAUM:   Right.   But I just wanted to  
5       point out that it's clear that the use of the stamp is  
6       indicating that the treatments were properly applied.  
7       That's all.

8               MR. KOODA:    Okay.

9               MR. NOSBAUM:   But yeah.   It's up to your  
10      discretion how you want to do that.

11              MR. KOODA:    I understand.

12              MR. NOSBAUM:   Okay.   The next question, okay,  
13      you wanted an image of implementation.   You had said you  
14      understood that at full compliance you know that  
15      material would be you know re-exported or destroyed.   In  
16      the beginning I've seen based on the knowledge that we  
17      have right now is that probably we would submit to  
18      treatment at the port at the importer's expense.   I  
19      can't give you a clear picture of what the steps will be  
20      nor what the timeline of those steps will be, generally  
21      things that APHIS considers in the Proposed Rule and the  
22      Final Rule.   And guidance about that is usually  
23      discussed in the preamble to the Final Rule to the

1 degree that we feel that we can. This is the first time  
2 the international community has adopted an international  
3 rule on trade in a harmonized way. There is a lot to  
4 learn here. So I can tell you though that we are  
5 working on it and if you call me at my number, in fact I  
6 now have the list of names of people you can call  
7 depending on what your question is. So if you call my  
8 number, you can either talk to Hesham Abuelnaga. That's  
9 A-b-u-e-l-n-a-g-a or Jean Levy L-e-v-y. And both of  
10 them their telephone number is on my voice mail. They  
11 can help you with those questions in the future.

12 How firm is it that we're going to implement  
13 this? Well, it's all depending on completion of the  
14 Final Rule through this Proposed Rule. We're getting  
15 feedback now. We fully intend to go to a Final Rule and  
16 at this time right now we believe it's going to be as  
17 we've written, but we haven't seen the comments yet. If  
18 one were to assume that the comments would not be major  
19 and would not force us to reconsider our direction, we  
20 would probably follow a process very similar to what  
21 Richard just described. And in early next year we'd  
22 have a Final Rule, which would be very similar or the  
23 same as what we've already proposed.

1           Global view, multiple trading partners, when  
2           will they be adopting the standard? The name I gave  
3           earlier for Dave Lamb, he's the contact for that  
4           information. And also on my voice mail at the number --  
5           the contact number that you all have in the Proposed  
6           Rule, the name of Narcy Klag K-l-a-g and his telephone  
7           number, who is our direct liaison with international  
8           phytosanitary bodies and he'll also know that  
9           information.

10           MR. KOODA:    Okay. I have one more comment.  
11           I'd like to know if you would be able to consider a type  
12           of blanket certification by company, by importer? If I  
13           certify -- if my company certifies that all SWPM as we  
14           call it...

15           MR. NOSBAUM:   A lot of people call it SWPM.

16           MR. KOODA:    ...is free of wood-eating pests  
17           and we certify to your agency, whether or not we could  
18           be possibly exempt from any marking requirement and that  
19           this information could automatically be registered in  
20           the government's database and that we would be you know  
21           not subject to -- exempt.

22           MR. NOSBAUM:   I think what I need to say on  
23           that is why don't you write a comment and bring that

1       idea up?

2                   MR. KOODA:    Okay.

3                   MR. KELLY:    Yeah.   Just a second.   What Ray  
4       said if anyone has ideas or suggestions specific to your  
5       own situation where you think that you could meet the  
6       intent of the rule, but we would need a slightly altered  
7       procedure to allow you to do it in the rule, write us a  
8       comment.   And be as specific as you can about what  
9       you're suggesting and describe how it would achieve the  
10      effects that we are going for.   And a written comment  
11      like that will definitely be addressed in the Final Rule  
12      and we'll make a decision as to whether we can or cannot  
13      do specifically what you ask.   But don't phrase it in  
14      just general terms because we might not get exactly the  
15      point that you're trying to make.   So if you are asking  
16      for a specific exemption or a specific procedure,  
17      describe it as clearly as you can.   And I assume that  
18      you know our rule of course applies to imports into the  
19      United States.   You probably have to think through that  
20      idea in terms of other countries.   Any exemption we put  
21      into place in our regulations will not of course effect  
22      any of your shipments from the US to somewhere else.  
23      They would more likely be looking for exactly what the

1       IPPC Guidelines describe in terms of a mark and  
2       treatment at a certified facility and so on. So you've  
3       got to have separate chains I guess of SWPM for imports  
4       versus exports. Thank you. Do you have any more  
5       comments, sir?

6               MR. KOODA:    No.

7               MR. KELLY:    Okay. No more comments from this  
8       individual. Can I ask the rest of the audience who else  
9       would like to speak or ask us some questions this  
10      morning? Yes, sir. We'll start with -- this gentleman  
11      was up first. You can use the podium. If you'd start  
12      with your name, please? Thank you.

13              MR. MENTZER:   Lloyd Mentzer M-e-n-t-z-e-r of  
14      the Boeing Company. In spite of the fact that you have  
15      already commented that we can get this information,  
16      particularly problematic for us and if you can give us  
17      any even estimate of the implementation by China and the  
18      European Union is how are those processes going and  
19      what's your expectation of when they will make  
20      adoptions?

21              MR. NOSBAUM:   I can be more specific about  
22      the EU than I can about China. The EU's process as you  
23      know they have a commission and the commission plans on

1       completing whatever regulatory procedure it goes through  
2       by the end of this summer. And then their time frame is  
3       for early next year, January as well, that each country  
4       would have completed their various rule making to be  
5       able to implement the standard. So it looks like EU is  
6       trying to target the same time frame as the United  
7       States, Mexico, and Canada. On China, I went with a  
8       small delegation to China in November of last year. And  
9       they had already begun -- they commissioned a couple of  
10      committees to study and the last I heard is those  
11      committees are still studying if and how they would  
12      implement the standard. What I would say though is that  
13      you may be aware that they've applied and became members  
14      I think as of April of the IPPC, a signer to the  
15      Convention. So it's my belief then that they are in  
16      essence saying that they don't know how yet, but at some  
17      point they'll also be adopting the international  
18      standard. But we know nothing about their time frame.

19               MR. MENTZER: Is there the expectation that  
20      they will be accepting the new symbol as opposed to the  
21      present papered system?

22               MR. NOSBAUM: I guess I can only be as clear  
23      as they were with us. You'll notice that I spoke in

1 implementation that at least in the beginning we would  
2 continue to allow paper certification. They probably  
3 for awhile will also continue to require paper  
4 certification.

5 MR. KELLY: Thank you, sir. Sir, you were --  
6 would you care to come to the podium or take the  
7 microphone?

8 MR. REUBEN: Thank you. My name is Ron  
9 Reuben R-e-u-b-e-n. I'm with DHL Danzas. I'm a broker  
10 here in Los Angeles. I have a small comment and then  
11 two quick questions really more involved with customs.  
12 My comment is that the importers who call on this issue  
13 regularly, several times a week, generally consider it -  
14 - the requirements for certification are somewhat  
15 annoying, but are really supportive of the USDA's  
16 efforts and appreciate the work you're doing. And that  
17 leads to my first question, which has to do with  
18 security. Customs has a new program, an anti-terrorist  
19 program, CTAPAT. I don't know if you're familiar with  
20 that. They don't generally...

21 MR. NOSBAUM: Why don't you go ahead and  
22 describe a little bit about...

23 MR. REUBEN: Right. Well, it's a concept

1       that all goods brought into the country that come in on  
2       a lane, starting with the shipper overseas, brought by  
3       carriers to truckers and warehouses and finally arrive  
4       at a distribution center. And that if everybody, all  
5       five or six partners who make up that ring were to  
6       really tighten up their security, then overall security  
7       would be very solid and we would be more low-risk to a  
8       weapon of mass destruction. And so the markings on  
9       these pallets would seem to say the pallet could not  
10      carry any pests that were a weapon of mass destruction  
11      and I wonder if anything in USDA -- if you're talking to  
12      customs about making these requirements part of the  
13      CTAPAT program in any way, in any way you're doing any  
14      kind of input to the security issue that we're all faced  
15      with these days? And the second question I have  
16      everyone's saying when will this be implemented and I of  
17      course I guess what we're hearing is that it's not  
18      coming in on any one particular day, it's not being  
19      driven by let's say WTO, that everybody has to get in  
20      their requirements. And so I'd just like to know is it  
21      true that if we join the IPPC Convention, does that mean  
22      from that day forward all imported goods from all  
23      countries as they come into all ports in the US, they

1 must follow those requirements? Thank you.

2 MR. KELLY: Thank you. Again I'll let Ray  
3 respond to most of this. Briefly I'll preface it with  
4 this. Of course APHIS has been working on homeland  
5 security issues in cooperation with other agencies and  
6 of course a great size of our -- great deal of our  
7 workforce at the ports has in fact been transferred to  
8 the Department of Homeland Security. And we also have  
9 people working on projects to coordinate both our  
10 operations and our regulations to be consistent with  
11 what other agencies are doing on homeland security and  
12 bioterror and related issues. So there's a great deal  
13 of cooperation going on right now. Let me turn it over  
14 to Ray now to give you some more specific responses.

15 MR. NOSBAUM: Thanks, Richard. You saved me  
16 part of my response. Yeah. As Richard said a great  
17 deal of Plant Protection and Quarantine, part of APHIS  
18 became part of the Department of Homeland Security, so  
19 they're now part of that process. Specifically I  
20 mentioned earlier in my response to Mr. Kooda the name  
21 Jean Levy. She is directly involved with individuals  
22 over on the DHS side in working out these kinds of  
23 issues around implementation. I'm sure she's much more

1 familiar with the IPAD you said? ITPAD? Is that what  
2 you called it?

3 MR. REUBEN: CTAPAT.

4 MR. NOSBAUM: CTAPAT. Okay. She's probably  
5 much more familiar with this and would be working with  
6 her counterparts over there. If you have ideas of how  
7 that would work well again please submit them in your  
8 comments. This is information and again, this is why we  
9 have public comment, so that we have these ideas that we  
10 can consider. We want to make our roles as efficient  
11 and effective as possible. Yeah. And again, once the  
12 Final Rule is published, I think it in this case it  
13 becomes effective Richard 30 days after publication?

14 MR. KELLY: Most likely. If we have good  
15 cause we could -- well, 30 days after publication is the  
16 standard lag time. We can go in either direction based  
17 on good cause. We can make something effective  
18 immediately upon signature or upon publication if  
19 there's some sort of emergency brewing. Or we can have  
20 delayed effective dates or even staggered effective  
21 dates where parts of the rule take place a month after  
22 publication and parts of it are delayed for three months  
23 say. And any of these are possibilities, but as I said

1 the likeliest effective date is 30 days after  
2 publication. However, if anyone again wants to submit  
3 comments suggesting phasing in or a delay of any  
4 particular provision to give industry time to adapt to  
5 it, that's the sort of thing you could submit in a  
6 written comment and explain the rationale behind asking  
7 for it.

8 MR. REUBEN: In all shipments in all ports?

9 MR. NOSBAUM: And yes, your question about  
10 whether it goes into effect uniformly. Barring some  
11 change based on comments to do anything else, yes it  
12 would go into effect uniformly across the country in all  
13 ports at the same time. And one final remark on your  
14 suggestion about coordinating with the customs  
15 regulations, the CTAPAT regulations, and the effort for  
16 lane control, I'm on the regulatory staff at APHIS and  
17 I'll check into that when I get back to my office  
18 because what you said raised a couple of interesting  
19 points for me. I'd like to take a look at whether  
20 customs has published already or is developing some  
21 specific regulations on what they'll be looking for and  
22 then the possibility exists that APHIS could cooperate  
23 on one of two levels there. Either we might be able to

1 get their regulations to specifically state that they  
2 will look for compliance with the agricultural  
3 regulations. That would be the more formal way to go.  
4 Or the other way to go would be some sort of inter-  
5 agency memorandum of understanding or agreement where we  
6 simply help each other enforce the other agency's  
7 regulations operationally by having our -- by having  
8 people at the ports do work for both sets of regulatory  
9 goals in effect. Thank you for your comments, sir.

10 MR. REUBEN: You're welcome.

11 MR. NOSBAUM: The -- anyone else in the  
12 audience care to speak at this time or to ask any  
13 questions?

14 MR. HARRIS: Just a clarification. You're  
15 referring to any shipment? You're referring to any like  
16 courier shipments, air, truck, rail, boat, right?

17 MR. REUBEN: Yeah. As a broker, we make  
18 entry on all modes really from almost all countries of  
19 origin on all kinds of goods every day from all over the  
20 world. And importers are asking what will this apply to  
21 and we can simply say everything is my understanding.

22 MR. KELLY: Yes. That is correct. It will  
23 essentially apply to everything.

1                   MR. LARSEN:   My name is Jens Larsen  
2       L-a-r-s-e-n and I'm with shipping company Lauritzen  
3       Cool, who is bringing in food and meat from more or less  
4       South America and New Zealand.   And I understand of  
5       course all pallets that the food is brought in through  
6       have to apply to these new regulations.   One of my first  
7       questions would be does this symbol of course whenever  
8       it comes into effect be have to stamped on each pallet  
9       that comes in, but how do we have to document that each  
10      pallet has been treated as the rule says?   Does that  
11      have to be on the manifest, bill of lading?   At this  
12      moment I'm talking about 5000 pallets per shipment  
13      coming in.   I don't think there will be any USDA  
14      inspectors around to check each pallet for sure.   My  
15      next question is I can see on the last page that you're  
16      looking into the possibility of carrying cargo under  
17      controlled atmosphere could be part of the agreement.  
18      How do we follow up on that and how far are you on that?  
19      And the last question would be same as asking his  
20      question about his packing.   A minimum size, some of the  
21      boxes we bring in table grapes are actually wooden boxes  
22      made out of veneer and small column pieces, 3 x 1 1/2  
23      inches.   I mean does that have to apply, too, and will

1       each box once again have to be stamped?

2                   MR. KELLY:    Thank you, sir.  I'll pass this  
3       to Ray in a second.  We have had at least one other  
4       comment on that size issue, which essentially means if I  
5       am understanding you correctly, is there a minimum size  
6       for pieces of wood below which they are not considered  
7       solid wood packing material that must be treated.  Can  
8       crates or spacers or other things made out of  
9       sufficiently thin pieces of wood be exempted from  
10      treatment and I will pass this to Ray to answer in  
11      detail, but the short answer is yes.  Very small pieces  
12      of wood are considered not treatable.  They're not  
13      necessary to be treated.  We do not have a completely  
14      specific size standard in the regulations for that now.  
15      We have not defined exactly what small means.  This  
16      could be a ripe area for specific comments from  
17      industry.  If you want to look over the size of wood  
18      that you actually use and suggest that APHIS  
19      specifically say that wood pieces under a specified size  
20      be exempted we would be happy to consider that for this  
21      Final Rule.  As for pallet documentation and the use of  
22      controlled atmosphere treatments in particular, I'll let  
23      Ray address those.

1                   MR. NOSBAUM: Thanks again, Richard. Yeah.  
2                   He already said for your third question what I was going  
3                   to say. Submit written comments, please. On the  
4                   controlled atmosphere, in terms of amending or approving  
5                   the international standard, if you have information on  
6                   the efficacy of controlled atmospheres in killing pests,  
7                   as well as any technical or economic information about  
8                   it, I would submit it in comments to us. Additionally,  
9                   yes we are doing some research on controlled atmosphere  
10                  for wood, but we're in the early stages. The first  
11                  question was about the stamp and the manifest, bill of  
12                  lading. Essentially, if you are talking about exporting  
13                  from here to another country.

14                 MR. LARSEN: Other way around.

15                 MR. NOSBAUM: Okay. Into the United States,  
16                 each national plant protection organization is supposed  
17                 to cite out the verification program in their country of  
18                 how this will work. So say for example the EU or China  
19                 or Japan or wherever we're talking about would have  
20                 their own system following their own cultural or  
21                 bureaucratic procedures for setting that up. Basically  
22                 what has to happen is that the mark, if you look at the  
23                 mark that I mentioned, I think it's the mark in Annex

1 II, you'll see X's and O's and things. The first I  
2 think the two X's are the first things you see and they  
3 would indicate the country of source. And then the 000  
4 actually identifies who, what company applied the  
5 treatments. And the YY indicates if it was heat  
6 treatment and HT or if it was fumigation with methyl  
7 bromide there'd be an MB and if it's dunnage, which can  
8 be treated slightly different, there would be initials  
9 for that down at the bottom. So essentially what that  
10 mark is saying, this is the country and the treater and  
11 how they did it. And if an inspector looks at it and  
12 finds that it's non-compliant, then we in the United  
13 States would report back to the national plant  
14 protection organization of that country and say, "Look,  
15 from this source we received wood that was not -- that  
16 we believe was not properly treated." And we would keep  
17 a record of how consistently certain sources are  
18 identified as non-compliers. I mean because there can  
19 be accidents, but if it continues repeatedly within  
20 those companies we would believe would be fraudulently  
21 using the mark because they're really not treating  
22 properly. We need to emphasize the purpose of the mark  
23 is to mark that treatment was properly done. It's not

1 just being stamped on there to meet the requirement. It  
2 can only be placed on there if treatments are applied  
3 and are applied properly.

4 MR. KELLY: Ray, if I could ask my own  
5 follow-up question. I think the gentleman may also have  
6 been asking about whether any documentation would be  
7 required in the manifest or whether it would be useful  
8 to have documentation in the manifest about the solid  
9 wood packing material or whether we'd be working  
10 essentially from the markings themselves?

11 MR. NOSBAUM: The whole purpose of the mark  
12 is to eliminate paper. The whole purpose of the mark is  
13 to make it easy for the inspectors to be able to  
14 identify the solid wood packing material as properly  
15 marked, rather than having to follow electronic or hard  
16 copies to see if something is properly treated. That  
17 was the whole intent of the mark.

18 MR. KELLY: Any more comments or questions  
19 from the audience? Anyone care to say something? We  
20 will take a moment or two to thank you today and to give  
21 anyone who has last minute thoughts a chance to change  
22 their minds and add their comments to the transcript.  
23 But I did just want to say that we appreciate you coming

1 today. This is the process by which APHIS improves its  
2 rule and produces a better product and keeps from saying  
3 embarrassing things in print because we didn't ask the  
4 right people for advice. So thank you for coming today.  
5 These comments will be carefully considered as we move  
6 on to developing the Final Rule and of course there will  
7 be one more public hearing this Friday in Washington,  
8 DC. The audience seems to have no further comments or  
9 questions. One last poll, if anyone cares to speak  
10 otherwise we'll be closing this hearing down. Thank you  
11 all very much for coming today then and I will declare  
12 this hearing closed. It's approximately 10:10 in the  
13 morning. Thanks and have a nice trip home everyone.

14 \*\*\*

15 [End of Proceedings]

1 CERTIFICATE OF REPORTER, TRANSCRIBER AND PROOFREADER

2  
3  
4 IN RE: SOLID WOOD PACKING MATERIALS/IPPC STANDARDS

5  
6 HELD AT: Long Beach, California

7  
8 DATE: June 25, 2003

9  
10 We, the undersigned, do hereby certify that the  
11 foregoing pages, numbered 1 through 44, inclusive, are  
12 the true, accurate and complete transcript prepared from  
13 the reporting by the reporter in attendance at the above  
14 identified hearing, in accordance with applicable  
15 provisions of the current USDA contract, and have  
16 verified the accuracy of the transcript by (1) comparing  
17 the typewritten transcript against the reporting or  
18 recording accomplished at the hearings, and (2)  
19 comparing the final proofed typewritten transcript  
20 against the reporting or recording accomplished at the  
21 hearing.

22  
23 Date:

24  
25 Wendy L. Evans, Transcriber  
26 York Stenographic Services, Inc.

27  
28 Date:

29  
30 Sarah Mowrer, Proofreader  
31 York Stenographic Services, Inc.

32  
33 Date:

34  
35 Lucinda Nelson, Reporter  
36 York Stenographic Services, Inc.

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